

**ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF SPILL PREVENTION AND RESPONSE**

RESPONSE SUMMARY

**To Comments Received on the May 15, 2002 Public Review Draft of Proposed Regulations
Affecting Self-Propelled Nontank Vessels of Over 400 Gross Tons**

Comments on the May 15 public review draft were submitted to the Alaska Department of Environmental Conservation (DEC) by:

- Alaska Chadux Corporation
- Alaska Steamship Association
- At-Sea Processors Association
- Cook Inlet Regional Citizens' Advisory Council (CIRCAC)
- Corbett and Holt, L.L.C./Gallagher Marine Services
- ERST/O'Brien's
- Holland America Line/Westours Inc.
- Keesal, Young & Logan
- Laskaridis Shipping Co. Ltd.
- North West Cruiseship Association
- Chris Pace
- Dana L. Olson
- Paulsen & Associates, Inc.
- Tom W. Rueter
- Southeast Alaska Petroleum Resource Organization (SEAPRO)

Comments and responses by DEC are summarized under the following major topics:

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Primary Response Action Contractors

Comment submitted by Alaska Chadux Corporation.

Commenter stated that there was an inconsistency between the proposed Sections 75.501 and 75.990(74), in that a contractor that registers with ADEC to provide oil spill response services to nontank vessel (NTV) operators must have all the protections currently available under the existing Primary Response Action Contractor system.

DEC Response: Revisions made. The proposed definition of "oil spill primary response action contractor" excluded "response action contractors listed in nontank vessel plans". DEC agrees that this contradicts Sections 75.501(b)-(d), and the definition has been revised to include nontank vessel

contractors as described in Section 75.501 to be obligated under contract to the holder of an Oil Spill Contingency Plan issued under AS 46.04.055.

Comment submitted by Alaska Chadux Corporation.

Commenter stated that the proposed regulations at Sections 75.412(c) and 75.561(a) appear to create different time frames for the acquisition of equipment for NTV contractors and NTV plan holders, and that the regulations should allow for the same time frame for acquisition of response equipment. While 75.412(c) allows plan holders “sufficient oil discharge cleanup equipment to meet the requirements of 18 AAC 75.441 within two years after *(the effective date of this section)*”, 561(a) sets out “minimum registration standards” for nontank vessel cleanup contractors, including cleanup equipment.

DEC Response: Revisions made. The time frame allowed for acquiring equipment to comply with the NTV regulations was intended to be the same for both plan holders and contractors; therefore Section 75.561(a) was revised to clarify that the requirements are subject to the time frames in Section 75.412(b)--(c).

Comment submitted by Alaska Chadux Corporation.

Commenter stated that the revised statute (*CSSB 16(g)(2)(B)*) states that there must be “a certification that the applicant ... is a member of, or has a contract with, an oil spill response organization that is an oil spill primary response action contractor...” (emphasis added). The draft regulations omit the reference to being a “member of” a primary response action contractor, referring only to contracts.

DEC Response: Revisions made. The references to “contracts” were changed to “contracts or memberships” in the sections referring to relationships between the NTV cleanup contractor and other entities. References to contracts between the NTV incident management team were not changed, since the statute does not provide for anything but a contract in that instance. The word “demonstrate” in Section 75.428(2) was also changed to “certify” to make it consistent with the statute.

Comment submitted by Alaska Chadux Corporation.

Commenter stated that the proposed regulations use “response services” in proposed Section 75.446(5)(A) and “response actions” in Section 75.531(8)(B) to identify contracted services; terminology should be uniform.

DEC Response: Revisions made. “Response” was dropped and “services” used in these sections and in Section 75.532(9)(B), since the reference is to all contracted services.

Comment submitted by Alaska Chadux Corporation.

Commenter stated that the proposed regulations use the word “plan” interchangeably to mean different things: the plan document, the plan for response, or the plan for initial actions. The proposed regulations should either describe the action intended or use lowercase “plan” to describe an action or performance and capitalize “Plan” when referring to the actual Plan document.

DEC Response: Revisions made. The word “plan” was removed from Section 75.426(7), and “plan strategies” was changed to “response strategies” in Section 75.446(3)(C). This should remove the confusion with the use of the word “plan” to refer to the plan document.

Comment submitted by Alaska Chadux Corporation.

Commenter stated that the proposed regulations implied that an NTV contractor cannot register as more than one type of contractor; for example, a response planning facilitator (RPF) may not register as a cleanup contractor or incident management team as well. The proposed regulations should not imply that this is prohibited.

DEC Response: Revisions made. The intent is not to prohibit anyone from registering for more than one type of contractor. Therefore, a new subsection has been added to Section 75.501 stating that “nothing in this chapter shall prohibit a person from registering to provide more than one type of response action described in (b) – (d) of this section.”

Comment submitted by Alaska Chadux Corporation.

Commenter stated that there the registration fee requirement was confusing. It isn’t clear if contractors are required to submit a second fee if they register in another region of operation. The proposed regulations should clearly state that the registration fee is one fee, regardless of the number of areas of operations in the application.

DEC Response: Revisions made. DEC has clarified Sections 75.540(b) and (c) by adding language that “no additional fee will be charged for adding or deleting a region of operation to an existing registration.”

Comments submitted by Alaska Steamship Association, Corbett and Holt, L.L.C./Gallagher Marine Services, Tom Reuter.

Commenters stated that in proposed Section 75.562 Table H, Note 5, the definition of “on-scene” as being at the location of the “initial unified incident command post” in each region is problematic. The concern is that without an identified initial unified incident command post, arrival times “on-scene” are impossible to provide.

DEC Response: Revisions made. Table H, Note 5 was revised to say “in region” rather than “at the initial unified incident command post”. Designated personnel must be able to demonstrate the ability to arrive in any region for which they are registered within the required time frame. Since the exact location of the initial unified incident command post cannot be predicted, the reference was removed.

Comment submitted by Corbett and Holt, L.L.C./Gallagher Marine Services.

Commenter stated that Section 75.565(a) should have a provision that allows DEC to consider a response to an actual spill as meeting the requirements for one or more of the required tabletop exercises.

DEC Response: No change. The proposed Section 75.565(e) states that DEC will conduct drills appropriate to the status of the contractor, including the contractor's participation in actual response actions.

Comment submitted by Paulsen and Associates.

Commenter stated that the reference in proposed Section 75.443(e) to a "corresponding reduction in the frequency of oil discharge exercises under 18 AAC 75.485(a)" is vague and should be clarified.

DEC Response: No change. The referenced proposed Section 75.485(a) states that no more than one deployment and one tabletop exercise will be required for a nontank vessel "in each plan review cycle", therefore a five-year cycle will result in a reduction in the frequency of drills for that vessel.

Comment submitted by ERST/O'Brien's.

Commenter stated that Section 75.532(9)(C) does not provide for immediate termination of services for non-payment, disagreement over management or other contract disputes and should be revised to allow immediate termination for cause.

DEC Response: No change. The specific provisions of contracts between response action contractors and nontank vessel operators or their representatives are outside the scope of these regulations. The regulation sets forth the minimum assurances that must be a part of each contract.

Comment submitted by ERST/O'Brien's.

Commenter stated that Sections 75.532(3) and 75.561 Table H, Note 2 should not reference "qualifications", as the State has no criteria.

DEC Response: Revision made to Section 75.561 Table H, Note 2. The word "qualifications" was replaced with "experience" (no change to Section 75.532(3) was necessary).

Comment submitted by Tom Reuter.

Commenter stated that proposed Section 75.501(e)(2) prevents "mutual aid" agreements among plan holders, contrary to the intent of the Legislature and Task Force.

DEC Response: The section does prohibit mutual aid. It merely says that a person is not required to register as one of the classes of primary response action contractors if that person is a plan holder providing the same services to another plan holder.

Comment submitted by Paulsen and Associates.

Commenter stated that the proposed Section 75.428(a) regulates the private relationship between an RPF ("consultant") and the nontank vessel owner/operator ("client"). The state is attempting to define a minimum and maximum amount of services between client and consultant that infringes upon free enterprise and the section should be deleted. Commenter also stated that the information required by the revised proposed Section 75.533 would cause the RPF "enormous expense".

DEC Response: No change. The revised Section 75.428 defines two roles that a registered RPF may fulfill. In one of these roles the RPF is demonstrating to the State that the plan holder has available under contract sufficient resources to contain, control and clean up a spill pursuant to State law. The requirements in the proposed Section 75.533 are necessary for DEC to make this determination. In the other role, the RPF is merely facilitating the signing of contracts between third parties. The RPF is not a “consultant” but has a specifically designed role to meet the intent of the law. This requirement does not prevent anyone from being a “consultant” to a plan holder, whether or not they register as an RPF.

Comment submitted by Paulsen and Associates.

Commenter stated that the proposed Sections 75.551(a), 75.552(a) and 75.553(a) do not say how long DEC will take to notify the applicant of an incomplete application.

DEC Response: Revision made. The proposed sections were changed to say that DEC will notify the applicant within 10 working days of receipt of the application if the application is incomplete.

Comment submitted by Paulsen and Associates.

Commenter stated that the proposed Section 75.561(e)(1) should not reference “responding immediately upon direction by the plan holder or incident management team” but only “by the plan holder”.

DEC Response: No change. In some cases the incident management team may assume this responsibility, depending on the plan holder’s specific arrangements. The regulation therefore says “or”, rather than “and”.

Comment submitted by Paulsen and Associates.

Commenter stated that the phrase in Sections 75.561(e)(3) and 75.562(e)(3) requiring the contractor to abide by applicable permits and authorizations “unless directed to proceed otherwise by the federal or state on-scene coordinator” should be removed, since such direction would normally require a court order. If the FOSC or SOSC wishes the contractor to proceed otherwise they may negotiate their own contract.

DEC Response: No change. During a response action, the FOSC or SOSC may direct the contractor to take an action without a specific permit or authorization in the interests of protecting public health or the environment. This language recognizes the authority of the OSC in such emergencies.

Comment submitted by Paulsen and Associates.

Commenter stated that the proposed requirement in Section 75.562(e)(1) to “respond upon direction by the plan holder or the federal or state on-scene coordinator” empowers organizations not in a contractual relationship to direct the contractor. Only the responsible party should be able to direct the contractor.

DEC Response: No change. During a response action, the FOSC or SOSC may either monitor, augment or take over cleanup. This language recognizes the authority of the OSC to augment or take over cleanup if the responsible party is not conducting an adequate response.

Comment submitted by Paulsen and Associates.

Commenter stated an RPF should not be required to maintain contracts with outside contractors and that 18 AAC 75.428(a)(2) should be deleted.

DEC Response: No change. As noted above, in one role the RPF is demonstrating to the State that the plan holder has available under contract sufficient resources to contain, control and clean up a spill pursuant to State law. Without this requirement there is no obligation to respond and no demonstration that State requirements have been met.

Comment submitted by Paulsen and Associates.

Commenter stated that the RPF is not an oil spill primary response action contractor under Section 75.990(115) and “response planning facilitation services” does not adequately define the RPF’s duties.

DEC Response: Revision made. Consistent with the Task Force on Motorized Transport’s recommendation, the RPF is an oil spill primary response action contractor, as defined under proposed Sections 75.990(74) and 75.501. However, DEC agrees that the RPF definition was inadequate and has changed it to reference the specific services described in the proposed Section 75.428.

Response Plan Requirements

Comment submitted by Paulsen and Associates.

Commenter stated that in Section 75.400(b), DEC should be required to confirm an emergency verbal approval in writing within 48 hours of the verbal approval.

DEC Response: No change. A 48-hour requirement unnecessarily burdens DEC in an emergency situation. DEC will respond with a written approval as quickly as possible. Until that time, the verbal approval is valid. This regulation has been in effect since 1992.

Comment submitted by Laskaridis Shipping Co. Ltd.

Commenter asked whether Section 75.400(a)(5) allows a person subject to AS 46.04.030 delegate the submission of the application of the plan to an office approved by Alaska the same way as it is being done in California. Commenter also suggested that the phrase “or nontank vessel” be added after “an oil discharge prevention and contingency plan”.

DEC Response: No change. The submission of an application under 18 AAC 75.400(a)(5) may be delegated to a response plan facilitator as provided for in the proposed Section 75.428. The phrase “or nontank vessel” should not be added, as they are subject to 46.04.055 and are addressed in the sentence that follows.

Comment submitted by Laskaridis Shipping Co. Ltd.

Commenter suggested including a definition of “operations” in Sections 75.410(b)(4), 75.426(3) and 75.427(b)(1)(B) or changing it to “bunkering operations”.

DEC Response: No change. A definition is not necessary because a nontank vessel (as defined by regulation) in Alaska waters, regardless of the type of operation it is conducting, must have an approved response plan. “Beginning of operations” means whenever the vessel first enters State waters.

Comment submitted by Laskaridis Shipping Co. Ltd.

Commenter asked why in Section 75.426(5)(B) DEC should not provide the plan holder with the details of “each appropriate government agency”.

DEC Response: No change. DEC will help a plan holder identify the appropriate government agencies upon request. However, due to the fact that they may depend on the region of operation, may change from time to time, and are otherwise case-specific they are not specifically identified in the regulation.

Comments submitted by At-Sea Processors Association, Paulsen and Associates.

Comments stated that the requirement in Section 75.405 for 60 days notice before submitting an application for a plan approval is excessive and 14 days should be sufficient.

DEC Response: No change. Section 75.405 applies only to oil discharge prevention and contingency plans and nontank vessel equivalent plans. Because these plans are subject to public review and require a more extensive review, 60 days notice is necessary. Nontank vessel streamlined plans may be submitted as little as 5 days before the date of entry into Alaska waters.

Comment submitted by At-Sea Processors Association.

Commenter stated that Section 75.447 should not apply to nontank vessel plans since the Task Force and legislative intent clearly expressed misgivings with the best-available technology (BAT) requirement. BAT should not be included in the regulations.

DEC Response: No change necessary. The January 30, 2002 proposed draft does not change this section, therefore the section does not apply to nontank vessel plans.

Comments submitted by At-Sea Processors Association, Paulsen and Associates.

Commenters stated that in Sections 75.405, 75.410 and 75.415, requiring the plan holder to notify and submit copies of proposed plan amendments or updates to various agencies is unnecessary and burdensome.

DEC Response: No change. These requirements apply only to oil discharge prevention and contingency plans and nontank vessel equivalent plans. Because these plans are subject to public review, copies of amendments must be provided to participating agencies. The applicant is responsible for the cost of these copies. Nontank vessel streamlined plans are not subject to this requirement.

Comment submitted by At-Sea Processors Association.

Commenter stated that given the challenges of weather and geography in Alaska, it's possible that equipment stored in another region of operation could be delivered more quickly than equipment stored within the region of operation. Notes 2 and 7 in the proposed Sections 75.446 Table F and 75.561 Table G should allow for the availability of equipment in each region or "capable of being deployed in region within 24 hours."

DEC Response: No change. Containment and control equipment must be in the region of operation under the response planning standard. Actual deployment of equipment from another region in a spill event may be appropriate, but the plan holder must demonstrate the availability of containment and control equipment in region to meet the planning standard.

Comment submitted by Paulsen and Associates.

Commenter stated that the notes to the proposed Sections 75.446 Table F and 75.561 Table G stating that quantities of boom must be in each region of operation contradicts the proposed Sections 75.446(3)(c) and 75.561(c), respectively. A similar comment was made regarding the required workboats.

DEC Response: No change. One of the recommendations of the Task Force on Motorized Oil Transport, adopted by the Legislature in the authorizing statute, was for initial containment and control capability to be located in the region of operation. The equipment requirements for each region of operation are consistent with this recommendation.

Comments submitted by CIRCAC.

Commenter stated that the proposed regulations should provide for regional citizens' advisory council and public participation in the review and approval process through one of three potential courses of action: "umbrella" plans, revised streamlined plan review process, or revised cleanup contractor and incident management team registration process. Commenter stated that DEC should address the lack of statutory compliance, differences in requirements between streamlined and equivalent plans, and consistency review under the Alaska Coastal Management Program.

DEC Response: No change. These comments was addressed in the Response Summary to Comments Received on the January 30, 2002 Public Review Draft (pp.3, 13-14).

Comment submitted by Corbett & Holt, L.L.C./Gallagher Marine Services, Inc.

Commenter stated that in 75.426(7)(A), the term oil "storage" tanks might be misinterpreted and difficult to define. Since it appears the remaining provisions of this section address fuel oil, commenter recommends replacing the term "oil storage" with "fuel oil" tanks.

DEC Response: No change. The referenced citation refers to vessel diagrams, and the requirement covers all types of fixed oil storage tanks including bunker, diesel, slop tanks, etc.

Comment submitted by ERST/O'Brien's.

Commenter stated that there are situations where a vessel (spot charter) will be added at the last moment (most likely on a Thursday or Friday) and a five-day decision will preclude gaining

approval for the vessel. A step should be added to Section 75.415(e) for the department to issue a written decision within 8 hours declaring its need for a full five-day review. No 8-hour declaration would mean that the vessel is added to the existing plan.

DEC Response: No change. Although the regulations specify a 5-day decision window, every effort will be made to render a decision on a complete application as quickly as possible to accommodate last-minute requests.

Comment submitted by Tom Reuter.

Commenter stated that a shorter two-day time frame should be allowed for approval of an addition of a vessel of the same or lower maximum fuel capacity to a streamlined plan.

DEC Response: No change. Current regulations provide for a five-day turnaround on the addition of vessels to a contingency plan. While DEC makes every effort to turn these amendment applications around in the shortest possible time, a mandatory two-day approval time frame would be impossible to meet. Current practice “allows” for a shorter approval time.

Comment submitted by Laskaridis Shipping Co. Ltd.

Commenter asked if the plan holder needs to make a new application every time a vessel goes to Alaska under Sections 75.410(c)(4), 75.426(3) and 75.427(b)(1)(B), which require the “scheduled date for operations to begin”.

DEC Response: Revision made. A new application is not necessary; language has been changed to reference the date for the “beginning of operations”. This is the initial entry into Alaskan waters for a nontank vessel covered by a plan, not subsequent entries by it or other vessels covered by the same plan.

Comment submitted by Laskaridis Shipping Co. Ltd.

Commenter stated that the proposed Section 75.426(8)(c) should be amended to require the location and size of each “tank vent or overflow pipe” instead of “tank hatch”.

DEC Response: Revision made. This section (and Section 75.427(b)(2)(H)(iii)) has been amended to read “the location and size of each tank valve, overflow pipe and tank access point,” for clarification.

Comment submitted by Paulsen and Associates.

Commenter stated that the emergency action checklist required under the proposed Section 75.427(b)(2)(A) requires too much information since checklists are written to address several types of emergencies and should only list the main priorities in an initial response. Commenter also stated that officers, rather than appropriate response personnel, should be required to carry the checklist since some crew members don’t carry wallets and if they were wearing PPE during a response they could not access the checklist.

DEC Response: No change. A similar requirement has been in regulation since 1992. The checklist is meant only to cover the initial response actions and can be as short as necessary. Requiring the

checklist to be carried by “appropriate response personnel” allows more flexibility than mandating that all ships’ officers carry them. The plan holder can decide who should “appropriately” carry the checklist. With regard to wearing PPE, the checklist is meant as a preparedness tool for the person conducting initial response actions, not as something to be referred to by all responders throughout a response. The checklist is intended to serve as a “reminder” since the appropriate personnel should already be familiar with the required initial response actions.

Comment submitted by Paulsen and Associates.

Commenter stated that the requirement in Section 75.427(b)(2)(E)(I) requiring plans for “alternative transport methods” in adverse weather conditions should be changed to plans for “stand by travel” in such conditions.

DEC Response: No change. A similar requirement has been in regulation since 1992. The plan holder must consider the use of alternative transport methods if the primary method may be unavailable due to weather. “Stand by” refers to doing nothing, therefore no “plans” would be necessary.

Comment submitted by Paulsen and Associates.

Commenter stated that the requirement in proposed Section 75.427(b)(2)(F)(iv) should be changed from “procedures and methods” to exclude oil from environmentally sensitive areas to “planning procedures” since the language limits plan holders to a generic plan for coastal protection.

DEC Response: No change. A similar requirement has been in regulation since 1992. Current plan holders may identify and follow procedures developed for shoreline protection such as the geographic response strategies identified in relevant Area Plans and other sources and are not limited to a generic plan.

Comment submitted by Paulsen and Associates.

Commenter stated that the requirement in proposed Section 75.427(b)(2)(F)(vi) should be changed from a description of “actions to be taken” to recover oil and “plans and provisions” to a description of the “planning process” for taking these actions.

DEC Response: No change. A similar requirement has been in regulation since 1992. Plan holders must describe what actions will be taken to initiate and sustain oil recovery and what plans are in place to guide this recovery. The specific circumstances will differ in each incident, but the general response actions must be planned and procedures developed prior to a spill, not during a spill.

Comment submitted by Paulsen and Associates.

Commenter stated that the requirement in proposed Section 75.427(b)(3)(A) requiring titles, addresses and telephone numbers for agency response personnel is burdensome.

DEC Response: No change. A similar requirement has been in regulation since 1992. The appropriate State and federal agencies to be notified must be listed for each region or regions of operation. For vessels this will usually mean the local DEC Area Response Team and the local Coast Guard Marine

Safety Office. DEC will provide the appropriate State and federal contact information upon request by the plan holder.

Comment submitted by Paulsen and Associates.

Commenter stated that the requirement in proposed Section 75.427(b)(3)(B) requiring a listing of means of transportation, ownership and availability is overly burdensome.

DEC Response: No change. A similar requirement has been in regulation since 1992. An equivalent plan holder must demonstrate a level of planning that includes consideration of the logistics required to mount a response in each of the regions of operation. Information on the means of transportation, ownership and availability of transportation is a key factor used by DEC to judge the adequacy of a contingency plan. The regulations do not require preexisting contracts for such resources, but the plan must demonstrate that the applicant has considered how a response will be mounted in each region of operation.

Comment submitted by Laskaridis Shipping Co. Ltd.

Commenter suggested that the following prevention measures be added to proposed Section 75.443, Table E for credit:

- (1) Non-involvement of specific vessel in an oil pollution accident within last year (relative weight = 1);
- (2) Possession of a valid Safety Management Certificate under the ISM Code (relative weight = 1 for general cargo, cruise and container ships and 0 for fishing vessels, fish processors and tenders since it is not applicable);
- (3) Closed bunker tank overflow systems (i.e. an overflow of tank A would go to tank B instead of to the open deck (relative weight = 1 for all vessel types); and
- (4) Common vent pipe of bunker tanks (relative weight = 1).

Commenter also suggested changing “enhanced maintenance” to “planned maintenance”.

DEC Response: No change. While some of the proposed measures may reduce the size or incidence of a spill, DEC does not consider them worthy of additional credit under this section. “Planned” maintenance implies doing only what is necessary; “enhanced” maintenance refers to a program that exceeds the basic requirements.

Comment submitted by SEAPRO.

Commenter stated that if an equivalent plan holder for an individual vessel had the equipment in the proposed Section 75.446 Table F, this would be less than that required for a streamlined plan. Commenter believes it was the intention of the workgroup for both types of plans to require the same amount of response equipment.

DEC Response: A separate category for a one-vessel equivalent plan is appropriate, because it is the only situation envisioned in which a single plan will cover a single vessel. For streamlined plans, it is anticipated that nontank vessel cleanup contractors will contract with more than one vessel, therefore being listed in multiple plans covering multiple vessels.

Comment submitted by SEAPRO.

Commenter stated that several of the notes in the proposed Section 75.561 Table G were either confusing or too proscriptive. Boom descriptors were not accurate, plastic sheeting and waste bags needed specific thickness requirements, and the field guide, survey stakes and pitchfork requirements were too proscriptive – survey tape, for example, can fulfill the same function. Rakes should be allowed instead of pitchforks as they work effectively in Southeast Alaska.

DEC Response: Revision made. Boom descriptions were corrected and plastic thickness specifications were added. The requirement for a field guide was made more generic. “Survey tape” was added as an alternative to “survey stakes”. The pitchfork requirement was retained, since pitchforks are required in addition to rakes.

Comment submitted by Paulsen and Associates.

Commenter stated that several of the notes in the proposed Sections 75.446 Table F and 75.561 Table G were open to interpretation and recommended more specific requirements.

DEC Response: Revision made. As noted above, the requirements were made more specific by adding more detail, such as minimum bag and plastic sheeting size and thickness requirements.

Comment submitted by SEAPRO.

Commenter stated that Section 75.455 requires a plan for shoreline cleanup and restoration and protection of wildlife must be submitted to DEC for review and approval, and asked why this would be required of cleanup contractors since there is a proscriptive table setting out required equipment and materials.

DEC Response: No change. It is important to note that Section 75.455 refers to equivalent plan reviews only. In such plans a plan holder may elect to provide his or her own capability and not rely on contractors. If an equivalent plan holder does rely on a contractor for these services, the plan holder must still provide the required information.

Financial Responsibility

Comments submitted by Alaska Steamship Association, Chris Pace, Holland America Line/Westours, Inc., Keesal, Young & Logan, Laskaridis Shipping Co. Ltd., Northwest Cruiseship Association, Tom Reuter.

Commenters objected to the proposed revision to Section 75.271(b) as either requiring endorsements or giving the perception that they are required, which is inconsistent with the statute (AS 46.04.055(d)(2)). One commenter asked whether the State of Alaska has informed or advised the International Clubs Association that the new wording is being required. Another commenter said that the proposed change accomplishes “little, if nothing” because virtually all P&I clubs will elect not to demonstrate proof through this endorsement.

DEC Response: The proposed revision states that “coverage for the oil pollution risks specified in AS 46.04.040(i) may be demonstrated by using the following endorsements...” (emphasis added).

The proposed language simply allows the option to use special endorsements, and is not inconsistent with statute because they are in no way a requirement.

Comments submitted by Chris Pace, Paulsen and Associates.

Commenters stated that the language in the revised Section 75.235(n)(4) requiring DEC to determine that a vessel is “empty” was confusing and would involve DEC in additional certifications. One commenter suggested that the section say “empty of oil”.

DEC Response: Revision made. The language has been changed to say that the owner or operator must submit a notarized statement to DEC certifying that all oil has been removed from the vessel.

Comment submitted by Chris Pace.

Commenter recommended that the deductible amount proposed for Section 75.271(d) be decreased from \$50,000 to \$5,000 and stated there is no legal basis for waiving “even a penny” of financial responsibility.

DEC Response: No change. The \$50,000 figure was chosen to ensure that staff time is not expended in researching and verifying smaller deductibles, and the change has been vetted with the Attorney General's Office. DEC has not waived any total FR amount through the proposed change.

Other

Comment submitted by Alaska Chadux Corporation.

Commenter stated that the reference to the generic plan at the proposed Section 75.446(5)(A) should be removed.

DEC Response: The error was corrected by deleting the reference.

Comments submitted by At-Sea Processors Association, Paulsen and Associates.

Commenters stated that in Section 75.496, the Aleutian Region should include the Pribilof Islands.

DEC Response: Revisions made. Existing Section 75.495(a)(5) and proposed Section 75.496(a)(5) have both been amended to include the Pribilof Islands in the definition for the Aleutian Region.

Comment submitted by Laskaridis Shipping Co. Ltd.

Commenter asked why there were three different “corporations” noted in proposed Section 75.426(12)-(14) and asked whether DEC was aware of the costs of having those contracts. Commenter suggested that they should be approved by a vessel’s P&I Club and by DEC. Commenter stated that the cost per year in order to have a contract with said corporations may sum up to \$3,000. Commenter asked if DEC could consider this further since in California there is no annual cost for an OSRO.

DEC Response: No change. The enabling legislation did not create a State fee for nontank vessels. As in California, anyone operating a nontank vessel in state waters must have a contract or other approved means to clean up an oil spill that may result from that operation. In Alaska, the Task Force for Motorized Oil Transport, whose recommendations were adopted by the Legislature in the enabling legislation as the foundation for these regulations, established a market-driven system.

Comments submitted by Paulsen and Associates.

Commenter stated that in the proposed Sections 75.551(f) and (g), 75.552(f) and (g), and 75.553(f) and (g), “failure to appear” should be clarified and the rules for an informal review should be expanded.

DEC Response: No change. The requirements have been in regulation since 1992. The suggested changes are already understood under the existing language. The applicant has other means of redress under the provisions of 18 AAC 15, Administrative Procedures.

Comments submitted by Dana L. Olson

Commenter submitted several comments challenging the “legal and factual basis” for the regulations, “sufficiency of public notice” and other issues.

DEC Response: No changes have been made as a result of these comments as they are not specific to the proposed rulemaking.

Comments submitted by Laskaridis Shipping Co. Ltd.

Commenter asked several questions regarding existing and proposed regulations that are not directly relevant to the proposed regulations under review. These questions will be answered directly and are not listed here.

Editorial Comments

Minor non-substantive editorial comments were made and considered for inclusion in the revised draft.